

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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NEW ALLIANCE BANK,

Plaintiff,

DECISION AND ORDER  
06-CV-6503 CJS

vs.

C.P. MOTION, INC., et al.,

Defendants.

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**APPEARANCES**

For the Plaintiff:

Jerauld E. Brydges, Esq.  
Harter, Secrest and Emery, LLP  
1600 Bausch & Lomb Place  
Rochester, NY 14604-2711

For the Defendants:

Christopher D. Thomas, Esq.  
Nixon Peabody LLP  
Clinton Square  
P.O. Box 31051  
Rochester, NY 14603

**Siragusa, J.** Before the Court is plaintiff's motion (# 17) for summary judgment. The facts alleged by plaintiff, and not disputed by defendants, show a breach of the Master Lease Agreement, the terms of which include the remedy for a breach. Although defendants have raised issues concerning good faith negotiations to resolve the breach, they have not contended on this motion that there is no breach. In fact, defense counsel conceded that any modifications to the Master Agreement had to be in writing and since there was no writing, there could be no modification. (Real Time Transcript of Oral Argument (May 18, 2007) at 4.) Plaintiff is, therefore, entitled to judgment. Further, the

Master Lease Agreement specifically states that plaintiff is entitled to reasonable attorney's fees and costs.

The Court awards \$272,515.10 in damages against defendants. In addition, the Court awards reasonable attorney's fees of \$4,953.00 and costs and disbursements of \$719.28, for a total judgment of \$278,187.38. Accordingly, it is hereby

ORDERED, that the Clerk enter judgment for plaintiff in the amount of \$278,187.38.

It Is So Ordered.

DATED: August 22, 2007  
Rochester, NY

ENTER.

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA  
United States District Judge